

REMARKS

Claims 1-24 are pending in this application. Claims 1 and 23 have been amended and claims 25-26 have been added by the present Amendment. Amended claims 1 and 23 and new claims 25-26 do not introduce any new subject matter.

Claims 6-22 and 24 have been withdrawn from consideration without prejudice pursuant to 37 C.F.R. § 1.142(b), as being drawn to a non-elected invention and have been canceled without prejudice by the present Amendment. In addition, claim 5 has been canceled without prejudice by the present Amendment.

REJECTIONS UNDER 35 U.S.C. § 102

Reconsideration is respectfully requested of the rejection of claims 1-4 and 23 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,238,964 ("Cho"), claim 5 having been canceled.

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as is contained in the . . . claim." Richardson v. Suzuki Motor Co., 868 F.2d 1226, 1236, 9 U.S.P.Q.2d 1913, 1920 (Fed. Cir. 1989); M.P.E.P. § 2131.

Applicants respectfully submit that Cho does not disclose or suggest a concave-type capacitor having an upper electrode formed by chemical vapor deposition and physical vapor deposition, as recited in amended claim 1, and a concave-type capacitor having an upper electrode formed by physical vapor deposition and chemical vapor deposition or atomic layer deposition, wherein the upper electrode includes a first upper

electrode and a second upper electrode, as recited in amended claim 23. Therefore, Applicants respectfully submit that claims 1 and 23 are not anticipated by Cho. In addition, for at least the reason that claims 2-4 depend from claim 1, claims 2-4 are also not anticipated by the cited reference.

The Examiner maintains that Cho discloses a concave-type capacitor having the claimed features. Applicants respectfully disagree with the Examiner's conclusion. In contrast to the concave capacitor recited in claims 1 and 23 (see, e.g., Fig. 2, reference numeral 136, wherein the capacitor 136 is formed in a concave hole 129), Figs. 1-8 of Cho clearly show a capacitor with a convex configuration. Applicants respectfully submit that Cho does not teach or suggest a concave configuration. Further, Cho provides no suggestion to modify the convex configuration to develop a concave-type capacitor.

Therefore, Applicants respectfully submit that Cho does not anticipate claims 1 and 23 for at least the reasons that Cho does not disclose (1) the concave-type capacitor having an upper electrode formed by CVD and PVD, as recited in amended claim 1; and (2) the concave-type capacitor having an upper electrode including first and second upper electrodes formed by PVD and CVD or ALD, as recited in amended claim 23.

Since Cho does not disclose or suggest the limitations recited in independent claims 1 and 23, Applicants respectfully submit that independent claims 1 and 23 are not anticipated by Cho. Claims 2-4 depend from claim 1, which, for the reasons stated hereinabove, is submitted not to be anticipated by the cited reference. For at least those very same reasons, claims 2-4 are also submitted not to be anticipated by the cited reference.

Therefore, Applicants respectfully request that the Examiner withdraw the rejection of claims 1-4 and 23 under 35 U.S.C. § 102(b) and that claims 1-4 and 23 are in condition for allowance, claim 5 having been canceled.

REJECTIONS UNDER 35 U.S.C. § 103(a)

Reconsideration is respectfully requested of the rejection of claims 1-4 and 23 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Application Publication No. 2003/0104638 ("Kim"), claim 5 having been canceled.

Applicants note that the present application claims priority under 35 U.S.C. § 119 to Korean Patent Application No. 2002-44986, filed on July 30, 2002 ("986 application"). Kim has a U.S. filing date of October 9, 2002 and was published on June 5, 2003. Therefore, the priority date of the present application antedates both the U.S. filing and publication dates of the cited reference.

Accordingly, pursuant to sections 2136.03, 706.02(b) and 201.15 of the Manual of Patent Examining Procedure, M.P.E.P. §§ 2136.03, 706.02(b) and 201.15 (Rev. 2, May 2004), Kim may be precluded from being used as a ground for rejection if Applicants perfect priority by submitting an appropriate English translation of the '986 application. Accordingly, Applicant files herewith an English translation of the certified copy of the '986 application and a statement that the translation is accurate.

Therefore, Applicants submit that because the foreign priority date of the '986 application (July 30, 2002) is prior to the both the U.S. filing and publication dates of Kim (October 9, 2002 and June 5, 2003, respectively), Kim cannot be used as a section 102 reference in an obviousness rejection under section 103(a).

Further, Applicants note that the Examiner is not entitled to rely on Kim's Korean

priority date (Korean Patent Application No. 2001-75689, filed on December 1, 2001) because Kim did not result or claim the benefit of an international application that designated the United States and was not published in English under PCT Article 21(2). See M.P.E.P. § 706.02(f)(1).

Accordingly, for at least the reason that Kim cannot be used as a prior art reference, Applicants respectfully submit that claims 1-4 and 23 are patentable over Kim.

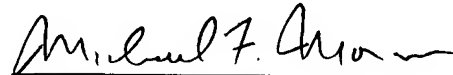
Therefore, Applicants respectfully request that the Examiner withdraw the rejection of claims 1-4 and 23 under 35 U.S.C. § 103(a), claim 5 having been canceled.

NEW CLAIMS 25-26

Applicants present new claims 25 and 26 for consideration by the Examiner and respectfully submit that new claims 25 and 26 are patentable over the cited references for at least the reason that the cited references do not disclose or suggest "an anti-reflective layer formed on the second upper electrode", as recited in independent claim 25.

An early and favorable reconsideration is earnestly solicited. If the Examiner has any further questions or comments, the Examiner may telephone Applicants' Attorney to reach a prompt disposition of this application.

Respectfully submitted,



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